IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 987 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAZMABEN ISHAKBHAI MANSURI & 1 - Applicant(s)
Versus
IQBALBHAI ISHAK MANSURI & 1 - Respondent(s)

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Appearance :
MR SK BUKHARI for Applicant(s) : 1 - 2.
MR SP MAJMUDAR for Respondent(s) : 1,
MR MR MENGDEY APP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/11/2007

ORAL JUDGMENT

1. RULE. Learned advocate Shri S.P. Majmudar waives service of Rule on behalf of the respondent No.1 and learned A.P.P. Shri Mengdey

for the State.

2. With the consent of the learned advocates appearing on behalf of the parties, this petition is taken up for final disposal today.

3. Petitioner No.1 is wife of respondent No.1 and petitioner No.2 is minor daughter of respondent No.1. They have challenged the quantum of monthly maintenance ordered to be paid by the Courts below.

4. Learned Judicial Magistrate First Class, Bharuch by his order dated 6.5.2006 passed in Criminal Misc. Application No.42 of 2002 awarded monthly maintenance of Rs.2,500/- to the wife and Rs.1,500/- to the daughter of respondent No.1. The petitioners approached learned Sessions Court by filing Criminal Revision application No.80 of 2006 seeking higher maintenance. The learned Additional Sessions Judge, Fast Track Court No.2, Bharuch by his order dated 24.11.2006 revised the maintenance to Rs.3000/- and Rs.2,000/- respectively for the wife and daughter of respondent No.1. Present petition has been filed seeking higher maintenance than that fixed by the Sessions Court.

5. Having heard the learned advocates appearing for the parties, it

appears that respondent No.1 is employed in O.N.G.C. as Assistant Executive Engineer. His counsel has produced on record a salary slip of September, 2007. It shows that his basic pay is Rs.14,015/-. In addition thereto, he receives several allowances such a variable D.A. of Rs.9,965/- operation allowance, shift allowance etc. His monthly salary, thus is Rs.42,532/-. Though, he suffers several deductions, many of these deductions are in nature of his investments or for repayment of loans taken by him for his personal expanses and to make his life more comfortable. Such deductions, therefore, cannot be taken into account. However, he is shown to be paying income tax of Rs.12,095/- per month. Deducting this sum from his monthly salary, it can be seen that he receives a net salary of approximately of Rs.30,000/- per month.

6. In so far the liability of respondent No.1 is concerned, he has his second wife, two children from his second marriage and one son from his first marriage to support.

7. Respondent No.1 has not disputed his responsibility to maintain the petitioners. Two Courts have upheld the right of the petitioners to receive maintenance. Respondent No.1 has not challenged these decisions. The only question, therefore, called for consideration is appropriate quantum of such maintenance that should be fixed.

8. Considering the income of the respondent No.1, his own liability and the fact that the petitioner and her minor daughter would also require sufficient sum of money every month to maintain their minimum life style with comforts, I find that a total Rs.7000/- should be awarded to the petitioners. A sum of Rs.4,500/- for the wife and Rs.2,500/- for minor daughter of respondent No.1 would thus be justified, in facts of the case, to be awarded. The learned advocate for respondent No.1, however, pointed out that the current salary of respondent No.1 was revised only in the month of January, 2007. That being so, revised monthly maintenance shall be payable to the petitioners only from the date of the petition and not from the period earlier thereto.

9. Consequently this petition is disposed of by directing that respondent No.1 shall pay monthly maintenance of Rs.4,500/- to petitioner No.1 and at the rate of Rs.2,500/- to petitioner No.2. Such revised maintenance shall be paid with effect from the date of filing of the petition i.e. 15.5.2007. The arrears as per this order shall be paid over to the petitioners on or before 8.11.2007. Petition is disposed of accordingly. Rule is made absolute to above extent. Direct service is permitted.

(AKIL KURESHI, J.)

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